

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

MELODY KOHL,
Plaintiff,

vs.

THE BANK OF NEW YORK
MELLON f/k/a The Bank of New
York et al.
Defendants.

Case No.: 15-CV-849-CAB-DHB

**ORDER DENYING MOTION TO
PROCEED IN FORMA
PAUPERIS**

[Doc. No. 2]

Plaintiff, a nonprisoner proceeding *pro se*, filed a complaint and motion for a temporary restraining order asserting various claims in an effort to prevent a residential foreclosure. Plaintiff also submitted a Motion and Declaration Under Penalty of Perjury in Support of Motion to Proceed *In Forma Pauperis* (“IFP”) pursuant to 28 U.S.C. § 1915(a). For the reasons set forth below, the motion to proceed IFP is denied.

I. Motion to Proceed *In Forma Pauperis*

All parties instituting any civil action, suit or proceeding in a district court of the United States, except an application for writ of habeas corpus, must pay a filing fee of \$350 plus a \$50 administrative fee. *See* 28 U.S.C. § 1914(a); CivLR 4.5. An action may proceed despite a plaintiff’s failure to prepay the entire fee only if

1 the plaintiff is granted leave to proceed IFP pursuant to 28 U.S.C. § 1915(a). *See*
2 *Rodriguez v. Cook*, 169 F.3d 1176, 1177 (9th Cir. 1999).

3 Here, Plaintiff's declaration fails to show that she is unable to pay the fees or
4 post securities required to maintain this action. Plaintiff states that she is a realtor
5 with an income of \$1,900 per month in addition to commissions from home sales,
6 which in the past year totaled \$9,000. In other words, Plaintiff's monthly income
7 plus commissions totaled \$31,800 for the past year. Plaintiff has complete
8 ownership of a 2002 Chevrolet Tahoe, has only one dependent, and lists monthly
9 expenses totaling only \$1,705 (which amount includes \$80 for cable, \$375 for gas,
10 and \$600 for water and electric utilities, as well as \$565 for "MLS" and "Sandicor"
11 fees that appear to be business expenses).

12 Although the federal poverty guidelines are not the sole basis for
13 determining *in forma pauperis* status, the 2015 federal poverty guidelines issued
14 by the United States Department of Health & Human Services set the poverty
15 threshold for a two person household's annual income at \$15,930 in the 48
16 contiguous states and the District of Columbia. *See* Annual Update of the HHS
17 Poverty Guidelines, 80 Fed. Reg. 3236-37 (Jan. 22, 2015). The Court further notes
18 that the Legal Services Corporation provides civil legal aid for low-income
19 Americans, and its maximum income level for a two person household eligible for
20 legal assistance is \$19,913 (125% of the Federal Poverty Guidelines). *See* Income

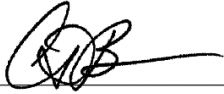
1 Level for Individuals Eligible for Assistance, 80 Fed. Reg. 5485-86 (Feb. 2, 2015).
2 Plaintiff's annual income far exceeds these poverty guidelines. Moreover, in light
3 the fact that Plaintiff's monthly income far exceeds her monthly living expenses,
4 the Court finds that payment of the filing fee in this case would not prevent
5 Plaintiff from being "able to provide [her]self and dependents with the necessities
6 of life." *See Adkins v. E.I. DuPont de Nemours & Co.*, 335 U.S. 331, 339 (1948).
7 Accordingly, the Court **DENIES** Plaintiff's Motion to Proceed IFP pursuant to 28
8 U.S.C. § 1915(a).

9 **II. Conclusion and Order**

10 In light of the foregoing, **IT IS HEREBY ORDERED** that Plaintiff's
11 Motion to Proceed IFP is **DENIED**. [Doc. No. 2.] If Plaintiff wishes to proceed
12 with her claims, she must refile her lawsuit along with the required filing fees.
13 This Case is **CLOSED**.

14 It is **SO ORDERED**.

15 Dated: April 17, 2015

16 
17 Hon. Cathy Ann Bencivengo
18 United States District Judge
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